

Further, Applicants amendment dated June 6, 2001 does not include new matter. Accordingly, claims 1-31, 48-50, 52-61 and 62-82 are in allowable form whereby reconsideration and allowance is respectfully requested.

Claims 48-61 and 73-82 were rejected under 35 U.S.C §112, first paragraph, based on the contention that the subject matter was not described in the specification as filed and therefore constitutes new matter. Applicants respectfully submit that its amendment from "axles" to "axes" is fully supported in the application as filed. First, it is well known that rotation of any object, especially a wheel, is about an axis. Whether the wheels of the undercarriage of this application rotate about an axle and/or a spindle, the wheels are rotating about an axes which is understood by one skilled in the art. Further, referring to the specification, the axes recited in the rejected claims is defined therein. Referring to page 16, lines 14-16, whether axles or spindles are used, "the center of gravity of the welder is positioned or between the central axes of front and rear wheels 90 and 100." Referring to claim 32, as filed, recited are axles that are positioned on the machine between "the central axes of said front and rear wheel." Applicants submit that the wheels of the all-terrain undercarriage of this application rotate about an axis regardless of whether they are attached through an axle or a spindle. Reciting that the axes are positioned on the base locates the axes in relation to the structure of the claim. Applicants submit that the axes of the front and rear wheels are supported in the originally filed specification and clearly define that the claim is not limited to wheels rotating about a spindle or an axle. Accordingly, Applicants respectfully request that the rejection under 35

U.S.C. §112, first paragraph, of claims 48-61 and 73-82 be withdrawn.

Claims 71-73 and 82 were rejected under 35 U.S.C. §112, first paragraph, as containing subject matter not described in the specification as filed and therefore constituting new matter. The rejection relates to the center of gravity being between the axles when the welder is in both a tilted and a non-tilted position. Applicants respectfully submit that this limitation is supported in the specification as filed and therefore requests that this rejection be withdrawn. Referring to the specification, as filed, page 2, lines 24, 27 and page 3, lines 1-2, the position of the wheel axes are chosen so that the center of gravity is maintained between the axes in the tilted or non-tilted position.

Claims 29-30 and 31 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out distinctly claimed subject matter which Applicants regard as the invention. The specific text relates to the base of the undercarriage being "rearwardly rotatable about said rear wheels between a fully titled position and a non-tilted position." Referring to the specification and the drawings, this application relates to an undercarriage that allows increased maneuverability about certain obstacles. Referring to Figures 9 and 10, by including wheels which rotate about closely spaced axes, the undercarriage allows the supported welder to be easily maneuvered over curbs and other obstacles. In this respect, by pushing down on handle 136, the welder rotates about the axis of the rear wheel axle, to raise the front wheels off the ground and to maneuver the welder over the obstacle. Applicants submit that the recited rotation about the rear wheels relates to the ability to rotate the frame of the undercarriage and thus the welder about the

rear wheel axis which is shown in the Figures and described in the specification. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Claims 1-31, 48-50, 52-61, 74 and 75 were rejected under 35 U.S.C. §103 predominantly based on Karpoff No. 5,730,891 (Karpoff). The basis for Karpoff being used to reject claims of this application is that it is the Examiner's contention Figure 1 shows the recited spacing of the wheel axes. Scaling Figure 1 of Karpoff to reject the claims of this application is improper. Only by the use of improper hindsight reconstruction in view of Applicants disclosure can the cited references be modified to obtain the invention of this application. The Examiner contends that scaling is only improper if "precise proportions" are involved. The Federal Circuit disagrees with this position. *Hockerson-Halberstadt, Inc. v. Avia Group International, Inc.*, 55 USPQ2d 1487 (CAFC 2000). *Hockerson v. Avia*, involves an appeal of a single issue, namely, "whether the District Court correctly construed the term 'central longitudinal groove' to require that the width of the groove must be less than the combined width of the fins." *Id.* at 1490. *Hockerson* contended that its drawings, submitted during the prosecution, contained figures which depict "a groove that is wider than the fins." *Id.* at 1491. The Federal Circuit corrected *Hockerson* holding that the patent at issue "is devoid of any indication that the proportions of the groove and the fins are drawn to scale" and therefore the drawings may not be relied to show the relationship between the width of the fins and the width of the groove. *Id.* at 1491 citing *In re Wright*, 569 F2d 1124, 1127, 193 USPQ 332, 335 (CCPA 1977) and MPEP §2125. Applicants respectfully submit that a comparison between the

width of the groove and the width of the fins is precisely the type of comparison that is involved in the §103 rejections of the claims of this application. Applicants respectfully submit that just as it is improper to use drawings to compare groove and fin widths, it is also improper to scale Figure 1 of Karpoff. Further, even if Karpoff is scaled, which is improper, Karpoff fails to disclose the recited structure in independent claim 1 let alone the recited structure of claim 2 or claim 74. With respect to the remaining references they fail to overcome the shortcomings of Karpoff and therefore claims 1-31, 48-50, 52-61, 74 and 75 are non-obvious in view of the cited references and are allowable.

Claims 1-18, 22-31 were rejected under 35 U.S.C. §103(a) as being unpatentable over Karpoff in view of Sueshige, et al. No. 6,129,166 (Sueshige) and Magda No. 4,926,768 (Magda). Claim 1 recites front and rear axles spaced along the longitudinal axis of the base at a distance less than about three times the sum of the radii of the front and rear wheels. As stated above with respect to Karpoff, it is improper to scale the drawings of a prior art references unless there is specific reference in the specification to do the same. The Examiner has referred to no portions of the specification which state that Figure 1 is drawn to scale. Further, even if Figure 1 is scaled, Figure 1 fails to show the recited axle structure of claim 1. Referring to the modified Figure 1 below, the spacing of the front and rear axles is greater than three times the radii of the respective wheels. In this respect, the modified Figure 1 of Karpoff includes four front and rear wheel radii cut outs set next to one another. This shows that even if Karpoff is scaled, it disclosed a spacing of greater than

three front and rear radii and fails to make obvious the invention of this application. Sueshige and Magda fail to overcome the shortcomings of Karpoff.

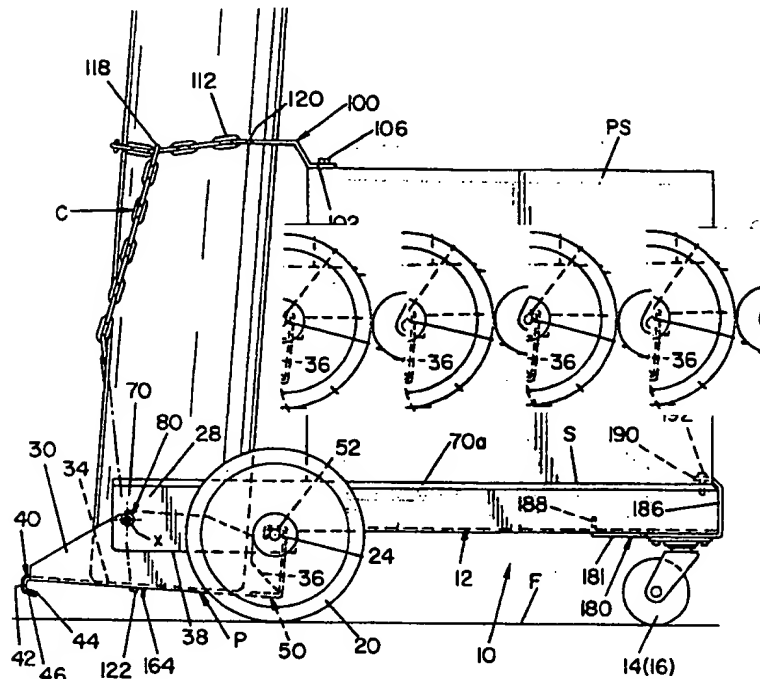


FIG. 1 (MODIFIED)

The invention of this application relates to a more maneuverable undercarriage which is utilized to transport a portable welding unit to obscure locations. This is accomplished by bringing together the front and rear wheels to make the undercarriage more maneuverable. Karpoff fails to disclose the invention. For one, it is improper to scale the drawings regardless of the use of the scaled drawing unless it is specifically stated in the specification that the drawing is to scale.

Second, even if Karpoff is scaled, it does not show axles which are spaced less than about three times the radii of the respective wheels. Sueshige and Magda fail to overcome the shortcomings of Karpoff and therefore independent claim 1 is deemed allowable.

Claims 2-18 and 22-31 are dependant from independent claim 1 and therefore are also deemed allowable.

Claim 2 further patentably distinguishes from the cited references by reciting an axle spacing between about 1.0 - 1.5 times the sum of the radii of the front and rear wheels. Applicant respectfully submits that even if Karpoff is scaled, which is improper, it does not show or make obvious the recited spacing. See modified Figure 1 above. Further, Sueshige and Magda fail to overcome the shortcomings of Karpoff and therefore claim 2 is deemed allowable.

Claims 3 and 4 further patentably distinguish from the said references by reciting a rear wheel radius to front wheel radius between 1:1 to 2.5:1. Such a wheel size ratio is not described in the cited references and therefore claims 3 and 4 are deemed allowable.

Claim 13 and 14 further patentably distinguish from the cited references by reciting the middle section being attached to the base section at an angle of about 15 to 70 degrees and the handle section being attached to the middle section at an angle between about 15 to 70 degrees wherein the handle section is perpendicular to the ground. Accordingly, claims 13 and 14 are deemed allowable.

Claims 16-18 further patentably distinguish from the cited references by reciting a lift bar which is secured to the push bar. Applicant submits that the cited references fail to disclose a lift

bar secured to the push bar and therefore these claims are deemed allowable.

Claims 26-28 further patentably distinguish from the cited references by reciting each flange including at least three axle openings which are generally aligned with one another. Applicant respectfully submits that the cited references fail to disclose or make obvious three axle openings in each side flange. With respect to Magda, an axle is a pin or bar about which a wheel or tire rotates. An axle and therefore an axle opening is not designed for use with a push bar. In fact, the push bar would not work as intended if it were allowed to rotate about its connection point with the frame. Accordingly, a push bar attached to the base in the prior art does not make obvious three axle openings in each of the side members of the undercarriage of this application. Accordingly, claims 26-28 are deemed allowable.

Claims 29-31 further patentably distinguish from the cited references by reciting a base which is rearwardly rotatable about the rear wheels between a fully tilted position and a non-tilted position such that the center of gravity is maintained forward of the rear axle and rearwardly of the front axle when in the fully tilted position. As discussed above, the undercarriage of this application is for use in connection with uneven ground surfaces wherein it is advantageous to be able to controllably tilt the device over curbs and other obstacles and since the undercarriage is supporting a heavy object, it is advantageous to always maintain the center of gravity between wheels even when in a fully tilted position. The cited references fail to disclose or make obvious this recited feature and therefore these claims are deemed allowable.

Claims 19-21 were rejected under U.S.C. §103(a) as being unpatentable over Karpoff in view of Sueshige, Magda and further in view of Momberg No. 4,062,430 (Momberg). As stated above, Karpoff in view of Sueshige and Magda fails to disclose, suggest or make obvious the recited undercarriage structure of independent claim 1. Momberg fails to overcome the shortcomings of Karpoff, Sueshige and Magda. Claims 19-21 are depended from independent claim 1 and are deemed allowable for the same reason.

Claims 48-50, 52, 54, 56, 57, 61 and 74 were rejected on 35 U.S.C. §103(a) as being unpatentable over Karpoff in view of Magda. Claim 48 patentably distinguishes from the cited references by reciting axes which are spaced apart along the longitudinal axis of the base so that the spacing is less than about three times the sum of the radii of the front and rear wheels. As stated above, with respect to claim 1, the cited references fail to disclose such a wheel spacing. Only the improper use of hindsight reconstruction in view of applicants' disclosure can be used to obtain the recited spacing in view of the cited references. Furthermore, even if Figure 1 of Karpoff is scaled, which is improper, it fails to disclose, suggest or make obvious the recited spacing of this application. In this respect, Karpoff's spacing is greater than three times the radii of his wheels. Accordingly, claim 48 is deemed allowable.

Claims 49, 50, 52, 54, 56, 57 and 61 are dependent from independent claim 48 and are also deemed allowable.

Independent claim 74 patentably distinguishes from the cited references by reciting wheels

that rotate about axes which are spaced apart along the longitudinal axis of the base so that the spacing is less than about two times the sum of the radii of the front and rear wheels. Applicants submit that for the same reasons as claim 1 and 48, it is improper to scale Karpoff to reject claim 74. Further, even if Karpoff is scaled a, which is improper, Karpoff does not show spacing of less than two times the sum of the radii of the wheels. As stated above, and is shown in the modified Figure 1 above, Karpoff's spacing is over three times the sum of the radii. Karpoff does not disclose or make obvious the recited two times spacing and Magda fails to overcome the shortcomings of Karpoff. Accordingly, claim 74 is deemed allowable.

Claims 53, 55, and 58-60 were rejected under 35 U.S.C. §103(a) as being unpatentable over Karpoff in view of Magda and further in view of Sueshige. Applicants submit that claims 53, 55 and 58-60 are dependent from independent claim 48 and are allowable for the same reasons. With respect to Sueshige, it fails to overcome the shortcomings of Karpoff in view of Magda. Accordingly, these claims are allowable.


With respect to claims 71-73 and 82, no rejection was found for these claims under 35 U.S.C. §§102 or 103 and therefore these claims are deemed to patentably distinguish from the prior art. Applicants submit that the for the reasons set forth above, the rejections under 35 U.S.C. §112 have been addressed and therefore claims 71-73 and 82 are allowable.

In conclusion, Applicants respectfully submit that claims 1-31, 48-50, 52-61, 71-75 and 82 are fully supported by the disclosure of this application, as filed, clearly identify the invention of this

application and patentably distinguish from the prior art. With respect to the prior art, the Federal Circuit has made it clear that the drawings of the patent do not define the proportions of the elements of the invention unless the specification specifically states that the drawings are to scale. *Hockerson v. Avia*, 55 USPQ2d 1487, supra. citing MPEP Section §2125. Accordingly, Applicants' respectfully submit that independent claims 1, 48 and 74 patentably distinguish from the cited references and are allowable. Further, even if Karpoff is scaled, which is improper, Karpoff fails to disclose the recited spacing in that Karpoff's wheels are spaced more than three times the sum of the radii of his wheels. Accordingly, claims 1, 48 and 74 are in allowable form.

With respect to the §112 rejection, Applicants submit that the limitations of these claims are supported in the specification as filed and that they properly teach one skilled in the art the invention of this application. Accordingly, Applicants respectfully submit that claims 1-31, 48-50, 52-61, 71-75 and 82 clearly define the invention of this application, are supported by the specification as filed and patentably distinguish from the cited references and are therefore allowable whereby reconsideration and a notice thereof is respectfully requested.

Respectfully submitted,
VICKERS, DANIELS & YOUNG



ROBERT V. VICKERS, Reg. No. 19,504
50 Public Square - Suite 2000
Cleveland, OH 44113
(216) 623-0040 phone
(216) 623-0407 facsimile